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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/437,815
Filing Date: November 10, 1999
Appellant(s): BEZOS ET AL.

Romiwa C. Akpala
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/20/2009 appealing from the Office action mailed 12/30/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct, HOWEVER applicant failed to include claim 106 as one of the canceled claims.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,285,987	ROTH et al	9-2001
6,178,408	COPPLE et al	1-2001
5,794,210	GOLDHABER et al	8-1998
6,339,438	BATES et al	1-2002

6,249,768	TULSKIE, JR et al	6-2001
6,324,519	ELDERING	11-2001
6,269,361	DAVIS et al	7-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-5, 45-50, 55, 75-81, 87-89, 91-99, 101, 102, 104-105 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Roth (US6285987).

Regarding claims 1, 50, 55, 75, 77, 93, 101, Roth et al teaches advertisers who submit ads over a network for future advertising opportunities. The bids specify an amount to pay to show an ad to a viewer having particular characteristics and on a website that meets a set of criteria [abstract]. When a website with advertising to be shown is requested, an ad opportunity is created. The system then normally chooses the highest bid from all submitted bids that meet the criteria for the display opportunity (user characteristics and type of requesting site). The associated ad is then delivered and displayed to the user at the browser [col 5 lines 29-45]. The ad display location for each ad to be displayed is taken to be a “slot”, as each ad is an HTML reference to an (single) advertisement on an advertising server [3:50-51]. Roth et al teaches that each ad plan/campaign specifies a number of ads to be shown during a period of time (exposure) [col 8 lines 3-5]. Roth et al also teaches an optimization method [col 8 lines

32-40] that attempts to “maintain the level of buying” to ensure the number of ad impressions is reached during the allotted time period – this provides a maximization of revenue whereby all/more ad campaigns tend to be fulfilled than if no optimization was provided. This method addresses the situation where a particular ad is not being selected frequently enough; an ad that is under-achieving and is below the optimum “level of buying” will be influenced to be selected over other ad bids. Roth et al achieves this by dynamically and artificially adjusting the bid amount upward to help ensure the ad is selected and help reach the optimum level of buying. Similarly, for an ad that is being selected too often and has a level of buying too high, the selection process is influenced to avoid choosing the ad in order to lower/restores the (optimum) level of buying. Roth et al achieves this by dynamically and artificially adjusting the bid amount downward to assist in avoiding the over-achieving ad, tending to result in other ads being chosen. The system of Roth et al receives bid amounts set by the advertisers (proposed bid - col 8 lines 44-46]). In certain circumstances, the bid selection logic changes the submitted amounts in order to slow down or speed up the impression rate of a particular ad so that the ad selection process may be influenced to “maintain the (optimum) level of buying.” The system-controlled changes to advertiser’s proposed bids are considered to be functionally equivalent to applicant’s selection procedure based on bid and likelihood that an ad’s specified number of impressions will be met. In the case where an under-achieving ad is influenced enough by the optimization process so as to be selected over a higher, competing proposed bid, the ad process can be said to have selected an ad associated with a advertiser-submitted bid

that is not the highest. System-increase of a low proposed bid so that the ad gets chosen is taken to be functionally the same as selecting a lower bid for an under-achieving ad. However, it would have been obvious to one of ordinary skill at the time of the invention for the system to have not manipulated the proposed bids at all, but merely choose the ads which need to increase their impression rate in order to maintain the level of buying, even if lower-bid ads must be selected. In this manner, the ads can be adjusted in line with their expected impression rate without surprisingly high bid increases. Further still, Official Notice is taken that an auction system that charges the winning bidder the price of the second-highest bid is a well known type of auction, known as a "Vickrey Auction" - named after its creator, the economist William Spencer Vickrey (1914-1996). It would have been obvious to one of ordinary skill to have taken the winning ad and charged the associated advertiser a price of a lower bid.

Regarding claims 2, 46, the selection of winning bid is performed after the ad request/opportunity.

Regarding claims 3, 4, 47, 48, 80, user demographics and time/date are used to specify and target bids. The selecting among the qualifying bids is therefore based on such criteria [col 14 lines 9-37].

Regarding claims 5, 49, 81, Roth et al teaches targeting the ads according to site keywords [col 14 lines 9-22] as well as page category/content [col 1 lines 50-53] and type of page [col 5 line 40].

Regarding claim 45, the bids/bid agents/bid criteria are stored in an orderly fashion in the system so as to associate the bids with the advertiser and related ad; this

represents inherent storage in a database of some type. Roth et al also teaches a log and billing function so that ad placements are noted and the advertisers billed [col 12 lines 39-40].

Regarding claim 75, 91, revenue can be said to be maximized because under-achieving ads will be sold and other (losing) ads with similar bids have opportunity to be sold later in their campaign.

Regarding claim 76, 92, it is obvious, if not inherent, that the optimization of Roth et al select under-achieving ads with less future opportunities over ads with higher bids who have more time left in their campaigns to achieve their total impressions.

Regarding claims 78, 79, 94-96, the system's bid modification is based on the likelihood of impressions (page appearances) being met and can be described as normalized bids.

Regarding claims 87-89, 97-99, the bids inherently represent the intentions/strategy of the advertiser. They plan to display ads on the types of pages and for the types of users specified in the criteria. Roth et al teaches that the ads be targeted to web page category/"type of page" as well as user characteristics. Such targeting criteria is inherently based on a correlation of such information to the types of ads to be presented. The advertiser inherently is seeking ad placement for items where the content/category of the page is related to the item being advertised. Roth et al also teaches targeting ads to users who have accessed certain types or categories of information [col 4 lines 63-67]. The Viewer History Data (viewing history, purchases, click through, etc) also provides an element for targeting [col 8 lines 65-67].

Claims 7, 8, 31-35, 41-43, 51, 52, 82-86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roth et al in view of Copple et al (US6178408).

Regarding claims 7, 8, 31-35, 51, 52, 82-86, Roth et al teaches bidding a “price or amount” [abstract], but does not teach the use of “points”. Copple et al teaches methods for accumulating “points” for participating in and making purchases over the Internet, for example [col 4 lines 6-11]. These points can then be used to bid on auctions of value. It would have been obvious to one of ordinary skill at the time of the invention to have enabled the advertising bidders of Roth et al to bid with any type of currency or value such as reward points for making transactions. It would have been obvious to one of ordinary skill at the time of the invention to have awarded points for any type of commercial transaction including transactions related to online-auctions so as to encourage a wide range of user-compensated-activity.

Regarding claims 41-43, the bids inherently represent the intentions/strategy of the advertiser. They plan to display ads on the types of pages and for the types of users specified in the criteria. Roth et al teaches that the ads be targeted to web page category/“type of page” as well as user characteristics. Such targeting criteria is inherently based on a correlation of such information to the types of ads to be presented. The advertiser inherently is seeking ad placement for items where the content/category of the page is related to the item being advertised. Roth et al also teaches targeting ads to users who have accessed certain types or categories of

information [col 4 lines 63-67]. The Viewer History Data (viewing history, purchases, click through, etc) also provides an element for targeting [col 8 lines 65-67].

Claims 9, 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roth et al and Copple et al in view of Goldhaber et al (US5794210). Copple et al does not teach receiving rewards/points for clicking through one web page to another. Goldhaber et al however teaches such an idea as “negative pricing of information”. Users are rewarded for clicking from one web page to another [col 7 lines 47-55]. It would have been obvious to one of ordinary skill at the time of the invention to have rewarded users who perform these actions with points useable in an online auction for ad placements.

Claims 44, 90, 100 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roth et al and Copple et al in view of Bates et al (US6339438). Roth et al does not teach targeting/selecting an ad if the item advertised competes with the content in the display space. Bates et al however, teaches to target or select a competitor's product advertisement based on the contents of the browser window, such as when it displays competitive items [col 7 lines 59-65]. It would have been obvious to one of ordinary skill at the time of the invention to have targeted ad placement/selection according to a whether the ad space displayed a competitor's offerings, so that the ad can be tightly related and relevant to the displayed user-requested information.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roth et al and Copple et al in view of Tulskie, Jr et al (US6249768). Copple et al does not teach receiving rewards/points for providing web page links for others to select. However, Tulskie, Jr et al teaches compensation for a user to provide referring links to an entity who rewards such activity [col 8 lines 14-17]. It would have been obvious to one of ordinary skill at the time of the invention to have rewarded such link referral with the reward point and auction system of Copple et al/Roth et al so that users can earn more points for various activities.

Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roth et al and Copple et al in view of Eldering (US6324519). While Roth et al teaches varying the bid amounts based on number of impressions or based upon user history [col 2 lines 31-41], there is no teaching for varying according to the degree which the ad criteria matches the page content. Eldering also teaches selecting targeted ads for websites based upon bidding auctions [col 12 lines 9-26]. Eldering also teaches providing a bid and target criteria. Column 10 lines 37-41 teach that the bid amount varies according to the degree of correlation between advertiser specified criteria and the opportunity characteristics. It would have been obvious to one of ordinary skill at the time of the invention to have employed variable bid amounts by advertisers of Roth et al based on the degree of correlation between the advertisers criteria of "type of page"/page category (content), so that advertisers who are willing to pay more for better opportunities can do so.

Claims 1-5, 45-50, 55, 75-81, 87-89, 91-99, 101-105 are alternatively rejected under 35 U.S.C. as obvious over Roth (US6285987) as above and further in view of Davis et al (US6269361). Davis et al teaches ad opportunities that each call for include plural, targeted ads that are to be placed on the page according descending bid amounts [abstract, 13:18-25, 18:11-18]. It would have been obvious to one of ordinary skill at the time of the invention to have auctioned ad opportunities using the system of Roth et al whereby plural winning ads are selected in a manner as taught by Davis et al. This would increase advertising revenue. Any of the second or lower-placed ads correspond to selected bids other than the highest bid.

Regarding claims 1, 50, 55, 75, 77, 93, 101, Roth et al teaches advertisers who submit ads over a network for future advertising opportunities. The bids specify an amount to pay to show an ad to a viewer having particular characteristics and on a website that meets a set of criteria [abstract]. When a website with advertising to be shown is requested, an ad opportunity is created. The system then normally chooses the highest bid from all submitted bids that meet the criteria for the display opportunity (user characteristics and type of requesting site). The associated ad is then delivered and displayed to the user at the browser [col 5 lines 29-45]. Roth et al teaches that each ad plan/campaign specifies a number of ads to be shown during a period of time (exposure) [col 8 lines 3-5]. Roth et al also teaches an optimization method [col 8 lines 32-40] that attempts to “maintain the level of buying” to ensure the number of ad impressions is reached during the allotted time period. This method addresses the

situation where a particular ad is not being selected frequently enough; an ad that is under-achieving and is below the optimum “level of buying” will be influenced to be selected over other ad bids. Roth et al achieves this by dynamically and artificially adjusting the bid amount upward to help ensure the ad is selected and help reach the optimum level of buying. Similarly, for an ad that is being selected too often and has a level of buying too high, the selection process is influenced to avoid choosing the ad in order to lower/restores the (optimum) level of buying. Roth et al achieves this by dynamically and artificially adjusting the bid amount downward to assist in avoiding the over-achieving ad, tending to result in other ads being chosen. The system of Roth et al receives bid amounts set by the advertisers (proposed bid - col 8 lines 44-46]). In certain circumstances, the bid selection logic changes the bids in order to slow down or speed up the impression rate of a particular ad so that the ad selection process may be influenced to “maintain the (optimum) level of buying.” The system-controlled changes to advertiser’s proposed bids are considered to be functionally equivalent to applicant’s selection procedure based on bid and likelihood that an ad’s specified number of impressions will be met. In the case where an under-achieving ad is influenced enough by the optimization process so as to be selected over a higher, competing proposed bid, the ad process can be said to have selected a proposed bid that is not the highest. System-increase of a low proposed bid so that the ad gets chosen is taken to be functionally the same as selecting a lower bid for an under-achieving ad. However, it would have been obvious to one of ordinary skill at the time of the invention for the system to have not manipulated the proposed bids at all, but merely choose the ads

which need to increase their impression rate in order to maintain the level of buying, even if lower-bid ads must be selected. Further still, Official Notice is taken that an auction system that charges the winning bidder the price of the second-highest bid is a well known type of auction, known as a "Vickrey Auction" - named after its creator, the economist William Spencer Vickrey (1914-1996). It would have been obvious to one of ordinary skill to have taken the winning ad and charged the associated advertiser a price of a lower bid.

Regarding claims 2, 46, the selection of winning bid is performed after the ad request/opportunity.

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Regarding claim 75, 91, revenue can be said to be maximized because under-achieving ads will be sold and other (losing) ads with similar bids have opportunity to be sold later in their campaign.

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Claims 7, 8, 31-35, 41-43, 51, 52, 82-86 are alternatively rejected under 35

U.S.C. 103(a) as being unpatentable over Roth et al and Davis et al, further in view of Copple et al (US6178408).

Regarding claims 7, 8, 31-35, 51, 52, 82-86, Roth et al teaches bidding a “price or amount” [abstract], but does not teach the use of “points”. Copple et al teaches methods for accumulating “points” for participating in and making purchases over the Internet, for example [col 4 lines 6-11]. These points can then be used to bid on auctions of value. It would have been obvious to one of ordinary skill at the time of the invention to have enabled the advertising bidders of Roth et al to bid with any type of currency or value such as reward points for making transactions. It would have been obvious to one of ordinary skill at the time of the invention to have awarded points for any type of commercial transaction including transactions related to online-auctions so as to encourage a wide range of user-compensated-activity.

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Claim 36 is alternatively rejected under 35 U.S.C. 103(a) as being unpatentable over Roth et al and Davis et al, further in view of Copple et al and Tulskie, Jr et al (US6249768). Copple et al does not teach receiving rewards/points for providing web page links for others to select. However, Tulskie, Jr et al teaches compensation for a user to provide referring links to an entity who rewards such activity [col 8 lines 14-17]. It would have been obvious to one of ordinary skill at the time of the invention to have rewarded such link referral with the reward point and auction system of Copple et al/Roth et al so that users can earn more points for various activities.

Claim 54 is alternatively rejected under 35 U.S.C. 103(a) as being unpatentable over Roth et al and Davis et al, further in view of Copple et al and Eldering (US6324519). While Roth et al teaches varying the bid amounts based on number of impressions or based upon user history [col 2 lines 31-41], there is no teaching for varying according to the degree which the ad criteria matches the page content. Eldering also teaches selecting targeted ads for websites based upon bidding auctions [col 12 lines 9-26]. Eldering also teaches providing a bid and target criteria. Column 10 lines 37-41 teach that the bid amount varies according to the degree of correlation between advertiser specified criteria and the opportunity characteristics. It would have been obvious to one of ordinary skill at the time of the invention to have employed variable bid amounts by advertisers of Roth et al based on the degree of correlation

between the advertisers criteria of “type of page”/page category (content), so that advertisers who are willing to pay more for better opportunities can do so.

(10) Response to Argument

Applicant argues that Roth et al chooses the highest bid. The system of Roth et al receives bid amounts set by the advertisers (proposed bid - col 8 lines 44-46]). In certain circumstances, the bid selection logic changes the bids in order to slow down or speed up the impression rate of a particular ad so that the ad selection process may be influenced to “maintain the (optimum) level of buying.” The system-controlled changes to advertiser’s proposed bids are considered to be functionally equivalent to applicant’s selection procedure based on bid and likelihood that an ad’s specified number of impressions will be met. In the case where an under-achieving ad is influenced enough by the optimization process so as to be selected over a higher, competing proposed bid, the ad process can be said to have selected a proposed bid that is not the highest. System-increase of a low proposed bid so that the ad gets chosen is taken to be functionally the same as selecting a lower bid for an under-achieving ad. Even though the advertiser-submitted bid may be supplemented by the system, the selection of an underachieving ad is taken to be selection of an ad having a low advertiser-submitted bid, regardless of how much the system supplements such a bid. Applicant argues that the advertiser pays more due to such supplementing, yet there is no such language in the claims; the claims do not specify how much an advertiser pays. However, it would have been obvious to one of ordinary skill at the time of the invention for the system to

have not manipulated the proposed bids at all, but merely choose the ads which need to increase their impression rate in order to maintain the level of buying, even if lower-bid ads must be selected. Further still, Official Notice is taken that an auction system that charges the winning bidder the price of the second-highest bid is a well known type of auction, known as a "Vickrey Auction" - named after its creator, the economist William Spencer Vickrey (1914-1996). It would have been obvious to one of ordinary skill to have taken the winning ad and charged the associated advertiser a price of a lower bid.

Further, Roth et al's system bid modification is based on the likelihood of impressions (page appearances) being met and can be described as normalized bids, the highest *normalized* bid being accepted. Applicant claims such features in claims 78-79 which depend from independent claim 75.

Applicant argues that examiner misunderstands Roth et al's proposed bid. Examiner disagrees and believes that the criteria defined by the advertiser in the system determines the bid proposals/pricing and that the system will manipulate the proposed bid(s) dynamically according to the other bids placed and the other relevant ad campaigns and their respective impressions and duration remaining. It could be said that a low bid that is inflated by the system in order to influence its selection can be fairly described as a "received" bid that is not the highest bid, even if the system has increased the bid price to be the highest at selection time. The bid is taken to include the advertiser, a particular, the characteristics of the ad opportunity as well as pricing. Applicant was notified that arguments regarding what particular price the advertiser is ultimately billed for the ad selection is not present in the claims.

Applicant argues that the examiner's analysis and the disclosure of Roth lacks an attempt to maximize the advertising revenue as is done with the instant invention. Examiner notes that many of applicant's claims lack any claim limitations regarding revenue. However, examiner strongly disagrees and points out that both Roth et al likewise maximizes revenue in the same way as applicant by attempting to ensure that all ads in the ad campaigns (having a finite number of desired impressions over a finite campaign duration) are shown and that ads that are behind schedule are influenced to be selected in order to "maintain the level of buying" [Roth et al 8:32-40].

Applicant's statement(s) that the examiner has failed to cite any portion of Roth et al that discloses or suggests selection of a bid that is not the highest is taken to be more of a disagreement with the examiner's analysis and conclusion rather than a failure on the examiner's part to cite to a portions of Roth et al that he considers to be relevant as a basis for his evidence, analysis and conclusion of unpatentability.

Applicant argues that Davis et al does disclose selection of a bid that is not the highest. Examiner's interpretation of the proposed combination of Roth et al/Davis et al clearly indicates how examiner believes that it would have been obvious to one of ordinary skill at the time of the invention to have selected an ad that was not the highest bid. This is done by selecting the second (and third...) highest bid(s) in order to place the second-most (and third-most...) prominent ad(s). Applicant in fact states that "Davis allocates...the second most advantageous display space to the next highest bid [brief: pg 20 lines 7-9]" which is precisely examiner's reasoning for rejecting the claims using Roth et al in view of Davis et al. A next highest bid is clearly not the highest bid. While

applicant argues that Davis et al selects each ad individually and that each time the highest *remaining* bid is selected, this argument is of narrower scope than the claims. There is no limitation that ads are to be chosen individually and more importantly no limitation that selection of a bid that is not the highest requires a bid that is not the highest *of the remaining or outstanding bids*. In fact, Examiner has yet to determine whether Davis et al chooses all three ads (in the case of having 3 ad spaces to fill) at one time or individually – but the examiner is certain that in either case the lower-placed ads represent selection of lower bids (i.e. bids that are not the highest).

Applicant argues that there is no motivation to combine Roth et al and Davis et al. Examiner disagrees and believes his analysis and reasoning set forth proper motivation – so that Roth et al can generate additional revenue by placing multiple ads on one page. Examiner's opinion is developed within the frame of reference of one having ordinary skill. Examiner's opinion of the advantage of presenting plural ads on a single page in order to increase ad revenue represents what would have been considered to be obvious to such an ordinarily-skilled person.

Applicant argues that examiner has used impermissible hindsight and attempts to rely on applicant's improvements as common sense or background knowledge. As pointed out previously, Roth et al provides an optimization system which influences the selection of ads within campaigns that are behind schedule in order to "maintain the level of buying" [Roth et al 8:32-40]. Secondly, the combination of Roth et al and Davis et al propose an invention that covers applicant's claims and do not rely in any way on applicant's improvements as impermissible hindsight.

Applicant appears to argue that there is no teaching how to combine the plural ads of Davis et al with the ad auction system of Roth et al. The examiner's rejection sets forth the concept of the combination: put the plural winning ads of Davis et al on the page of Roth et al. The examiner need not demonstrate the details regarding how this could be done. Applicant's arguments do not suggest any particular insurmountable problems one of ordinary skill would face when executing such a combination. The modifications necessary are nonetheless taken to be well within the capability of one having ordinary skill in this art.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jeffrey D. Carlson
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Primary Examiner, Art Unit 3688